

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE  
ATTORNEY GENERAL



MICHAEL A. DELANEY  
DEPUTY ATTORNEY GENERAL

September 30, 2005

Section 5 Submission

Chief, Voting Section  
Civil Rights Division  
Room 7254 – NWB  
Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 655:17, a STATUTE related to the declaration of candidacy, most recently amended by Laws of 1991 Chapter 218 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973(c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 655:17, a STATUTE related to the declaration of candidacy, most recently amended by Laws of 1991 Chapter 218 and previously amended by the chapters cited below.

**SUBMISSION:**

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 218 (1991) amending RSA 655:17 is attached (Exhibit 655:17 A).
- b) Previously precleared Chapter 436 (1979) recodifying RSA 56:012 as RSA 655:17 is attached (Exhibit 655:17 B) is submitted solely to establish the baseline for analysis of the submitted change.
- c) The changes made by amendments to RSA 655:17 are as follows:

1. Chapter 218 (1991) inserts the sentence "*I declare that I am not a candidate for incompatible offices as defined in RSA 655:10, and that I am not a federal employee which makes me ineligible to file as a candidate for this office*" into the form signed by a candidate filing for candidacy
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State's legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

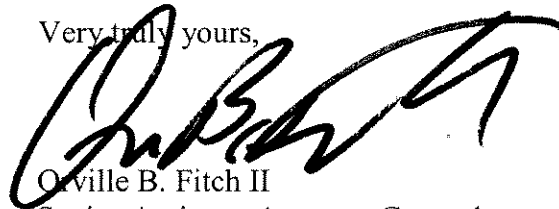
The legislature through a bicameral process passed law to create Chapter 218 (Exhibit 655:17 A). The bill was signed into law (by the Governor) on June 10, 1991, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:
  1. Chapter 218 (1991) adopted June 10, 1991
- j) Effective dates:
  1. Chapter 218 (1991) effective August 9, 1991
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:

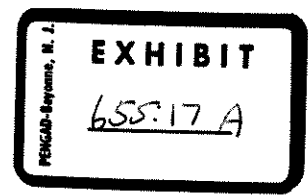
1. The purpose of the Chapter 218 (1991) change is to insert language specifically to have a person aware that he or she cannot declare candidacy for incompatible offices as defined in RSA 655:10 or seek partisan office if the person is a federal employee.
  2. The purpose of Chapter 436 (1979) change is to recodify RSA 56:012 as RSA 655:17
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. 42 U.S.C. 1973(c). They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups...to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).
- o) None known.
- p) RSA 655:17 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 655:17 C. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 655:17 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II  
Senior Assistant Attorney General  
Civil Bureau  
(603) 271-1238  
[bud.fitch@doj.nh.gov](mailto:bud.fitch@doj.nh.gov)



5/16/91 2693s

5/16/91 2892s

1991 SESSION 0022L

91-0007

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**HOUSE BILL - FINAL VERSION**

HOUSE BILL NO. 147 (CHAPTER 218, LAWS OF 1991)

INTRODUCED BY: Rep. F. Riley of Hillsborough Dist. 44

REFERRED TO: Constitutional and Statutory Revision

AN ACT relative to the information required on declarations of candidacy, primary petitions, and affidavits for qualifications of candidates.

AMENDED ANALYSIS

This bill amends the forms used for declarations of candidacy, primary petitions, and qualifications of candidates. The bill requires a candidate to declare that he is not a candidate for incompatible offices, and that he is not a federal employee.

The bill also adds certain information which must be included on primary petitions.

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EXPLANATION: Matter added appears in **bold italics**.

Matter removed appears in [brackets].

Matter which is repealed and reenacted or all new appears in regular type.

0022L

91-0007

10

**HOUSE BILL - FINAL VERSION**

HB 147

## STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand

nine hundred and ninety-one

## AN ACT

relative to the information required on declarations of candidacy,  
primary petitions, and affidavits for qualifications  
of candidates.

Be it Enacted by the Senate and House of Represen-  
tatives in General Court convened:

1 Additional Statement; Declaration of Candidacy. Amend RSA 655:17 to read as follows:

655:17 Declaration of Candidacy. Declarations of candidacy shall be in the following form and signed by the candidate:

I, ....., declare that I am domiciled in Ward ....., in the city (or town or unincorporated place) of ....., county of ....., state of New Hampshire, and am a qualified voter herein; that I am a registered member of the ..... party; that I am a candidate for nomination for the office of ..... (or for delegate to the state convention) to be made at the primary election to be held on the ..... day of .....; and I hereby request that my name be printed on the official primary ballot of said ..... party as a candidate for such nomination or

election. **I declare that I am not a candidate for incompatible offices as defined in RSA 655:10, and that I am not a federal employee which makes me ineligible to file as a candidate for this office.** I further declare that, if nominated as a candidate for said office or if elected as such delegate, I will not withdraw; and that, if elected, I will be qualified for and will assume the duties of said office.

2 Information Required on Certain Primary Petitions. Amend RSA 655:20, II to read as follows:

II. Any person qualified to run for office who does not, pursuant to RSA 664:5-a, voluntarily accept the expenditure limitations set forth in RSA 664:5-b shall, in order to have his name printed on the primary ballot of any party, in addition to the filing fees prescribed in RSA 655:19, file with the appropriate official the requisite number of primary petitions made by members of the party, together with one written assent to candidacy. **If a person is required to file primary petitions under the provisions of this paragraph, the primary petitions which he files shall contain the following language in bold print at the top of each petition in addition to the language required in RSA 655:21: "This candidate has reserved his or her rights under the federal constitution and New Hampshire laws and may choose not to agree to limit campaign spending according to amounts set by state law and as a result may be required to submit these petitions."**

**655:16 Personal Filing.** Except for those who must file with a town or city clerk, any person who files for a primary on the last day of the filing period must do so in person before the secretary of state; provided, however, that this requirement shall not apply to the filling of vacancies by party committees.

**655:17 Declaration of Candidacy.** Declarations of candidacy shall be in the following form and signed by the candidate:

I, \_\_\_\_\_, declare that I am domiciled in Ward \_\_\_\_\_, in the city (or town or unincorporated place) of \_\_\_\_\_, county of \_\_\_\_\_, state of New Hampshire, and am a qualified voter herein; that I am a registered member of the \_\_\_\_\_ party; that I am a candidate for nomination for the office of \_\_\_\_\_ (or for delegate to the state convention) to be made at the primary election to be held on the \_\_\_\_\_ day of \_\_\_\_\_; and I hereby request that my name be printed on the official primary ballot of said \_\_\_\_\_ party as a candidate for such nomination or election. I further declare that, if nominated as a candidate for said office or if elected as such delegate, I will not withdraw; and that, if elected, I will be qualified for and will assume the duties of said office.

**655:18 Forwarding Declarations of Candidacy.** Each city or town clerk shall forward each declaration of candidacy filed with him to the secretary of state on the day of filing of the same, provided the requisite fee shall have been deposited, or the requisite number of primary petitions shall have been filed therewith. The secretary of state shall retain them together with all declarations of candidacy filed with him until January 1 following the holding of the primary at which time they may be destroyed.

**655:19 Filing Fees.** Unless he chooses to submit primary petitions as provided in RSA 655:20, at the time of filing declarations of candidacy, each candidate, or some person for him, shall pay to the official with whom the same are filed the following fees: for governor and for United States senator, \$100; for representative in Congress, \$50; for counselor, \$25; for state senator, \$10; for county officer, \$5; for state representative, \$2. Candidates for delegate to the state convention shall not be required to pay a fee. The fees paid to a town or city clerk shall be forwarded to the treasurer of the town or city and shall be the property of the town or city for its use.

**655:20 Primary Petitions.** If he chooses not to pay the filing fee, the name of any person shall be printed on the primary ballot of any party if he files with the appropriate official the requisite number of primary petitions made by members of the party, together with one written assent to candidacy.

**655:21 Form.** Primary petitions shall be made in the following form:

State of New Hampshire

County of \_\_\_\_\_

ss.

I do hereby join in a petition for the printing on the primary ballot of the name of \_\_\_\_\_ whose domicile is in the city (town) of \_\_\_\_\_ (ward, street and number, if in a city), in the county of \_\_\_\_\_ for the office of \_\_\_\_\_ to be voted for on Tuesday, the \_\_\_\_\_ day of September, 19\_\_\_\_, and certify that I am qualified to vote for a candidate for said office, that I am a registered member of the \_\_\_\_\_ party, and am not at this time a signer of any other similar petition for any other candidate for the above office; that my domicile is in the city (town)

1979] of \_\_\_\_\_ (ward, street and number, if in a city), in the county of \_\_\_\_\_. I further certify that I believe the above-named person is especially qualified to fill said office.

(Signed)

State of New Hampshire

County of \_\_\_\_\_ ss.

City (Town) of \_\_\_\_\_, 19\_\_\_\_

The above-named, \_\_\_\_\_, personally known to me, appeared and made oath that the above petition, by him subscribed, is true. Before me,

Justice of the Peace or Notary Public

**655:22 Number of Petitions.** The number of primary petitions to be filed for each office shall be as follows: for governor and United States senator, 200; for representative in Congress, 100; for counselor, 50; for county officer, 20; for state senator, 15; for state representative, 5. Candidates for delegate to the state convention shall not be required to submit any primary petitions.

**655:23 Conflicting Petitions.** Each primary petition shall be a separate paper and shall contain the name of one signer and one candidate only. No voter shall sign primary petitions for more than one party, nor shall he sign more than one primary petition for the same office unless more than one nomination is to be made; in which case, he may sign as many primary petitions as there are nominations to be made for the same office. In case a voter has signed 2 or more such conflicting primary petitions, all such petitions shall be rejected.

**655:24 Oath on Petition *Prima Facie* Evidence of Party Membership.** The oath of a voter upon such petition shall be *prima facie* evidence that he is a member of the party stated therein.

**655:25 Assent to Candidacy.** No primary petitions as provided in RSA 655:21 shall be accepted by the official with whom they are to be filed unless there is attached thereto an assent to candidacy in the following form subscribed to by the person who seeks to have his name printed upon the primary ballot:

State of New Hampshire

I, \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby assent to the printing of my name on the primary ballot as requested in the attached petition. I further declare that I am a registered member of the \_\_\_\_\_ party. (Signed)

State of New Hampshire

County of \_\_\_\_\_

The above-named, \_\_\_\_\_, personally known to me, appeared and made oath that the above declaration by him subscribed is true.

Before me,

Justice of the Peace or Notary Public

**655:26 Examination and Rejection.** The officer with whom petitions are filed shall immediately upon receipt thereof examine them to ascertain whether they conform to the law. If found not to conform to be conflicting as provided in RSA 655:23, he shall then endorse

EXHIBIT

655:17 12

PS/CAD-Bayona, N. J.



U.S. Department of Justice

Civil Rights Division

EXHIBIT

655:17C

PENGAD 800-631-6889

JDR:RPL:SMC:jdh  
DJ 166-012-3  
2004-2563  
2004-2581  
2004-2582

Voting Section - NWB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.  
Assistant Attorney General  
Civil Bureau  
Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

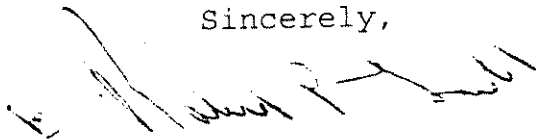
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

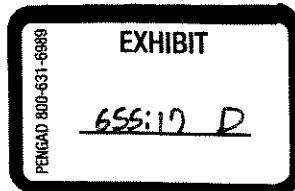
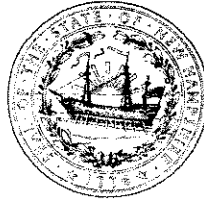
Joseph D. Rich  
Chief, Voting Section



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News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>  
New Hampshire Toll Free 1-866-8868-3703  
or 1-866-VOTER03  
[electionlaw@doj.nh.gov](mailto:electionlaw@doj.nh.gov)